

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JEFFREY KEARNEY, Respondent
Arkansas Bar ID#91249
CPC Docket No. 2009-021

JUL 07 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained through the Order of the Arkansas Supreme Court in the matter of *Timothy Toth and Linda Toth v. Arkansas Department of Human Services*, 09-98. The information in the formal charges of misconduct involved Jeffrey Kearny, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas.

On March 31, 2009, Mr. Kearney was served with a formal complaint, supported by information contained in the Supreme Court Clerk's records and file. He failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2008), constitutes an admission of the factual allegations of the formal complaint and extinguishes a Respondent Attorney's right to a public hearing.

The factual information before the Committee reflects that, on October 23, 2008, an Order Denying Motion to Intervene was filed in the Juvenile Division of Circuit Court of Drew County. The Order sets out that no pleadings were filed by Mr. Kearney in the underlying matter prior to the hearing, although he faxed pleadings to the Judge's office and counsel of record. The Motion to Intervene that Mr. Kearney filed was approximately one year after the termination hearing was held in the matter.

In order to be effective and in compliance with Supreme Court Rules, any Notice of

Appeal from the Order had to be filed within twenty-one days from the entry of the Order. This date was November 13, 2008. Mr. Kearney did not file a Notice of Appeal until November 21, 2008. Further, the Notice of Appeal had to be signed by both Appellants. It was not.

Thereafter, there was no action by Mr. Kearney to seek to perfect the appeal. There is no evidence that he attempted to file the record on January 30, 2009, which is the seventieth day from the date of the filing of the Notice of Appeal.

On January 30, 2009, a Motion to Dismiss Appeal was filed by counsel for the Arkansas Department of Human Services. The Motion set out Mr. Kearney's failure to comply with Rule 6-9 of the Arkansas Supreme Court Rules. Mr. Kearney did not respond to the Motion to Dismiss. The Motion was submitted to the Court. After consideration, the Court granted the Motion and dismissed Mr. Kearney's clients' appeal. His failure to comply with the provisions of the Arkansas Supreme Court Rules governing such appeals has caused his clients to be denied an opportunity to an appellate review of the decision of the lower court.

Upon consideration of the formal complaint and attached exhibit materials, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Mr. Kearney's conduct violated Rule 1.1 because he was not thorough enough in his representation of Timothy Toth and Linda Toth to be certain that the Notice of Appeal he filed from the Order denying Motion to Intervene in a parental rights proceeding complied with all the procedural requirements of the Arkansas Supreme Court, including containing the signature of his clients, and he was not thorough enough in his representation of Timothy Toth and Linda Toth to be certain that the Notice of Appeal he filed from the Order denying Motion to Intervene in a parental rights proceeding complied with all the procedural

requirements of the Arkansas Supreme Court, including being filed within twenty-one (21) days of the filing of the Order being appealed. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. Mr. Kearney's conduct violated Rule 1.3, when he failed to file a compliant Notice of Appeal for Timothy Toth and Linda Toth in a timely manner; when he failed to file any response to the Motion to Dismiss filed by counsel for the Arkansas Department of Human Services; and, after counsel for the Arkansas Department of Human Services filed the Motion to Dismiss, when he took no action to try to preserve an appeal for his clients in the parental rights termination proceeding. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Mr. Kearney's conduct violated Rule 3.4(c), when he failed to adhere to the requirements of Arkansas Supreme Court Rule 6-9(b)(2) when he failed to file a Notice of Appeal containing Mr. Toth's and Mrs. Toth's signatures and when he failed to adhere to the requirements of Arkansas Supreme Court Rule 6-9 when he failed to file a Notice of Appeal on behalf of Timothy Toth and Linda Toth within twenty-one (21) days of the Order Denying Motion to Intervene filed in the parental rights termination proceeding in Drew County. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

4. Mr. Kearney's conduct violated Rule 8.4(d) because his failure to comply with all provisions of Rule 6-9 of the Rules of the Arkansas Supreme Court resulted in his clients, Timothy Toth and Linda Toth, being denied the opportunity to appellate review of the adverse decision of the Drew County Circuit Court - Juvenile Division entered on October 23, 2008. Rule

8.4(d) requires that a lawyer not engage in conduct prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JEFFREY KEARNEY, Arkansas Bar ID#91249, be, and hereby is, **REPRIMANDED** for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Kearney is assessed the costs of this proceeding in the amount of **FIFTY DOLLARS (\$50)**. In addition, the Committee imposes a **fine of ONE THOUSAND DOLLARS (\$1,000)** pursuant to Section 18.B. of the Procedures. Mr. Kearney is separately sanctioned for his failure to respond to the disciplinary complaint. The separate sanction imposed is a **REPRIMAND**. The fine and costs assessed herein, **totaling ONE THOUSAND FIFTY DOLLARS (\$1,050)**, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: June 1, 2009